

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 15

NOTE : Answer **ALL** Questions.

1. Read the following case study and answer the questions given at the end :

Mayukhar Cement Industries Limited ('MCIL/the Company'), a leading cement manufacturing company based in southern part of India was established in the year 1998. Its founder Mayanth, was an engineer having industry experience and was keen to be an entrepreneur. He established a full-fledged manufacturing entity to manufacture and supply cement at a reasonable cost, to develop the hinterland and provide job to local people. The Company was run by Mayanth and his relatives. Over a period, more than 8 factories were established in and around Karnataka and the Company had created a brand for itself.

Mayanth was a first-generation entrepreneur and he had come from an agrarian background. As the Company grew in its operations and revenue, he employed more people from local areas around the factories. Mayanth with his strong leadership skills and vision, expanded the business of the Company, which grew exponentially over few years. The Company had gone for an IPO in the year 2005 and its shares were listed at premium. It adopted all the necessary corporate governance policies in its functioning. It also had a risk management framework which provided for review of the risk assessment and mitigation procedures, including periodical review of the procedures to ensure the executive management mitigates the risks through a properly defined framework. The Audit Committee, which has been designated

by the Board for this purpose, also reviewed the adequacy of the risk management framework of the Company, the key risks associated with the business operations and the measures in place to mitigate the same. The Company also had well qualified Audit Committee members, who usually asked questions in the audit committee meetings. Though the members of audit committee were well qualified independent directors, they were very close and well known to Mayanth. At the operational level, the Company had established all the necessary policies and procedures like risk management policy, whistle blower policy, etc.

Mayanth wanted to retire from business and he introduced his son Mahanth, as an executive director. Mahanth had done MBA from Stanford University and was trained in finer aspects of management. He was aspirational and wanted to further expand the business of the Company to other industries as well. He diversified the manufacturing business into various other sectors like brick and motor, steel and other ancillary industries relating to cement and its products. Initially, it required huge capital outlay, which they raised by way of borrowings and loans. The diversification of business took couple of years, but it did not yield the expected returns or growth.

Meanwhile, MCIL had developed a complex governance structure to accommodate its diversification aspirations and it had grown way too much to simplify. Each vertical had its own Finance manager who would report to a central Finance team headed by the CFO. Each Financial Manager was unaware of the performance of other vertical. The top management consisted of a few professionals and family members. In this process, many relatives and close associates of Mahanth were also given jobs in the Company to take care of the multiple verticals. Being promoter's relatives, they had easy access to information and decision-making, which they used for personal purposes. All top executives were allotted large number of

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ESOPs to ensure that they work hard for the Company and thereby aiding the boost in the share price. Mahanth, was greedy and wanted to increase the share value of the Company by showing results and did not mind to opt for any path, even though it may not be appropriate. The present directors of the Company and Committees of the Board, were well known to Mahanth and were aligned to his ideas and ideologies.

Whilst things seemed going fine apparently, but all was not well within the Company. The complex structure of verticals, allowed the MCIL to manage accounting in a way to conceal the performance of some verticals without impacting the profit numbers. The Financial reporting and accounting team of the Company, though aware about these matters but never dared to speak about it. Ghirya, a new employee in the team, noticed that the accounting of transactions was getting circumvented and was not appropriate. She informed the same to her manager, who nudged her to be silent for the sake of her job. Later, the independent directors of the Company also received an anonymous letter stating that the Company's financial records were being fudged. Though it was brought to notice of all the Directors, it was not acted upon.

The statutory auditors of the Company had rotated out in the year 2016 and Mahanth proposed to appoint, T & P LLP (one of the largest audit firms in the country), as the statutory auditors of the Company. Incidentally, the Director and Partner of the firm, were very well known to Mahanth. During the statutory audit, the audit team did raise few points regarding the controls and accounting policies of the Company. As the Partner of the firm and Mahanth, were close friends now, those points were not pursued, rather the audit fee was increased and new consultancy assignments were given to the audit firm. It could be easily deciphered that T & P LLP had compromised its independence with a large audit fee and also consultancy

income worth several times the audit fee. MCIL was such an important and large client for statutory auditor firm, that they could not go against the management. It was aware about the deficiencies in the financial records and signed off the financial statements to protect the management of the Company. It was also aware that, there were several significant internal control deficiencies including no effective management oversight of the external reporting process and a disregard of the relevant accounting standards.

Gradually, over the next four years, the situation of the Company went from bad to worse and the Company was running into losses and eroded its entire networth. The Company which was a leading manufacturer of cement, went into immense losses due to mismanagement. It had no option but to declare itself bankrupt, the Company issued a press statement that there were deviations between actual and reported results due to accounting errors. The obvious question which arose was, why the auditors, who were the first line of defense had not spotted and flagged off the issues in accounting & reporting by the Company. The independent directors of the Company and Mahanth, resigned from their positions.

Meanwhile MCIL, also had an impact on its market reputation and credibility. From a valued stock, MCIL was now a penny stock. Suraksha Materials Private Limited (SMPL) was supplying materials to MCIL since last many years. Due to operational issues and cash crunch, MCIL failed to pay SCPL's total outstanding amount of ₹ 1.75 Crore. The amount remained unpaid for more than a year. MCIL has been incurring losses for the last many years and it was expected that within the next 3 months, there might be a major financial crisis. The Company may not be able to pay its outstanding debts to many of its creditors, as its financial position could deteriorate further.

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The operational creditors with long over dues were worried, demand notices along with the photo copies of relevant invoices and outstanding statements as per the ledgers were officially sent to MCIL. The Company tried to convince SCPL and other operational creditors about the future plans of the business. Neither they were able to clear their dues, nor were they able to make any future commitments. After having meetings with the operational and financial creditors of MCIL, the Board of Directors of SCPL finally took a firm decision to file an application along with the required documents for initiation of the Corporate Insolvency Resolution Process (CIRP) against MCIL before the National Company Law Tribunal (NCLT) under Insolvency and Bankruptcy Code, 2016 ('IBC'). SCPL proposed the name of Vihaan, a Chartered Accountant and a leading Insolvency Professional as an Interim Resolution Professional (IRP).

NCLT admitted the application filed by financial creditors, operational creditors, and SCPL. The CIRP, commenced on the scheduled date, following the process under the provisions of the IBC. NCLT by an order issued a moratorium. As an IRP, Vihaan started managing all the Company's affairs. The powers of the Board of Directors of MCIL were suspended. The officers and managers of MCIL, started acting on the instructions issued by Vihaan and provided him with all the necessary information and documents. After receiving all the claims against MCIL and determining its financial position, Vihaan constituted a Committee of Creditors. In the first meeting of the Committee of Creditors, the committee approved to appoint Vihaan as the Resolution Professional. He took prior approval of the Committee of Creditors, whenever required. Vihaan prepared the required Memorandum for the Resolution Plan and invited prospective lenders, investors, and other persons to prepare Resolution Plans.

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In consultation with various stakeholders, Vihaan prepared a Resolution Plan. MCIL and all the stakeholders agreed with the resolution plan submitted during the Meetings of the Committee of Creditors. Vihaan had a firm belief that liquidation of MCIL is not at all necessary. Finally, all the stakeholders agreed with MCIL revival possibilities. Vihaan then submitted the Resolution Plan to the Committee of Creditors for approval. The Committee discussed it in detail and approved the Resolution Plan to revive MCIL with the required majority. The Revival Plan also approved the payments of debts due to SCPL and other Creditors. Vihaan submitted a Resolution Plan, approved by the Committee of Creditors to NCLT, which approved the Resolution Plan. MCIL was likely to back on track in the next 1-2 years and it could repay, its overdue debts to all of its Creditors. There has been a change in the present management of MCIL, and the Board is confident and is of the opinion that with certain financial decisions and concrete actions like the restructuring of some of the term loans MCIL had borrowed from banks, reduction in debtors' credit period for the faster realization to sort out liquidity issues, controlled inventory levels, certain other cost savings measurement, removal of some of the non-profitable items from the product mix, etc. might positively help the Company.

With reference to the above case study, answer the following :

- (a) Prepare a detailed note indicating the types of risks faced by a manufacturing entity like MCIL, which should form part of the risk management framework.

(10 marks)

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- (b) ‘The financial deterioration could have been averted, had those charged with governance acted upon the whistle blower complaints in a timely manner.’ Why do you think the whistle blowing mechanism failed in case of MCIL ? Explain in detail, the pertinent aspects which Board of Directors/Committees should consider to ensure that whistle blower mechanism works effectively.

(10 marks)

- (c) Assuming MCIL is under moratorium, in the background of IBC, analyse the validity of following transactions :

- (i) MCIL signed a lease deed with Anom, for the warehouse a year ago. MCIL has been in possession of such warehouse property since then. But now Anom terminated the lease and recovered his property.
- (ii) MCIL sold its property worth ₹ 10 crore to Krish & Co, so that it can repay its creditors.
- (iii) The licence of MCIL with some sector regulators was suspended, regarding which license fee is already paid by MCIL in advance.

(10 marks)

- (d) “The legal and regulatory provisions emphasize the importance of auditor’s independence. However, it is seen that the auditor’s independence is at times compromised.” In this background :

- (i) With reference to the Companies Act, 2013, explain the provisions which underscore the importance of auditor’s independence.
- (ii) Can any action be taken by regulators against such auditors who are found to have compromised on independence ?
- (iii) What can the Company do to ensure efficacy and independence of the statutory auditor function ?

(10 marks)

2. (a) An application was filed in the National Company Law Tribunal (NCLT) under oppression and mismanagement against the Managing Director of Jhalak Industries Private Ltd (JIPL). In the application, it was alleged that Jayna, the Managing Director of the Company siphoned off the money for his personal use and had purchased huge properties in the name of his family members out of the Company's funds. It was also alleged that Jayna had indulged in fraudulent sale transactions, thereby fudging the books of accounts of the Company. It was appealed that a forensic audit be conducted for the Company since March 31, 2018 and a petition was filed under sections 59, 241 and 242 of the Companies Act, 2013 alleging oppression and mismanagement against Jayna. It was also alleged that, he has been operating the finances of the Company in an arbitrary and whimsical manner and has siphoned off crores of rupees belonging to the Company without accounting for the same. The adjudication authority allowed the application and directed that forensic audit of JIPL be conducted since March 31, 2018. The Company had filed the appeal against the order passed by the adjudication authority.

In the background of above facts :

- (i) With reference to a decided case-law, evaluate whether the forensic audit ordered by the NCLT is tenable.
- (ii) Comment whether the Company will succeed in its appeal.

(6 marks)

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(b) Keyol, a post graduate in Mine engineering, was appointed in Brihat India Ltd (BIL) in June, 2020 in B-2 Grade and joined the same in July 2020 at Chhattisgarh. On a personal request made by Keyol, the HR Manager of the Company issued a transfer order dated 23rd September, 2020 transferring Keyol from BIL to Create India Ltd (CIL), a subsidiary of the BIL, in his existing capacity i.e. B-2 Grade. It was clearly mentioned in the transfer notice that, since the transfer had been made at the instance of Keyol himself, his seniority in the E-2 Grade would be reckoned from the date he joined CIL. Keyol claimed that in December 2023, the Company held its departmental promotion committee, after which several employees were promoted from B-2 Grade to B-3 Grade but he was overlooked for promotion. The reason given to him was that his transfer to CIL was done at his own request and his promotion would be considered only after he completed three years of work experience at CIL, which was the requisite period for promotion from B-2 to B-3. Keyol challenged the Company's decision by filing a writ petition before the High Court.

In the background of a judicial pronouncement, explain whether Keyol will succeed.

(6 marks)

3. (a) Gajam Private Limited, is company duly registered and incorporated under the provisions of the Companies Act, 1956, having its registered office at Bangalore. It is mainly engaged in manufacturing of automobile and allied products for export. The Company wanted to expand its footprint globally and needed funds for this purpose. After detailed evaluation and approval by the Board of Directors, the Company availed consortium credit facilities from various banks by mortgaging its properties. During 2019-20, there

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was a slump in the automobile market and was followed by Covid-19, resulting in a huge crisis and slowdown in the automobile business. This resulted in the Company defaulting on its loan repayment to bank and its account was declared as NPA, (on account of its borrowing being classified as non-performing asset).

The bank had initiated proceedings of e-auction of Company properties under SARFAESI Act, for recovery of its funds. In e-auction proceedings, only two bidders had participated and assets of the Company were sold to the highest bidder. The Company alleged that arbitrary practicess adopted by the bank officials in e-auction proceedings were anti-competitive in nature as the bank officials abused their dominant position by restricting access to market to the other players to make the bid.

With reference to a settled case law, examine whether the bank officials have violated the provisions of the Competition Act, 2002.

(6 marks)

- (b) Bhoomi Finance Ltd (BFL) is a Non-Deposit Accepting Core Investment Company registered with RBI and lends and invests in its Group Companies. BFL group had consolidated borrowing of over ₹ 1,000 crore in its balance sheet as on 31st March, 2023.

BFL defaulted on their obligations in respect of commercial paper (CP), inter-corporate deposits (ICDs) as well as on interest payments related to non-convertible debentures (NCDs) issued to various institutional investors, which were given the highest rating by the Rating Agencies and which continued till August, 2023, were abruptly downgraded to default grade in September, 2023. Its steep downgrade by the rating agencies in a matter of 25-40 days had completely changed the risk perception of the corporate bond market, investors' confidence and the securities markets as a whole.

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During investigation, it was come to light that, Kron India Limited, (KIL) a leading credit rating agency of India, had major lapses while assigning ratings on these instruments.

The matter was filed with SEBI, wherein Adjudicating Officer (AO), by the impugned order had imposed a penalty of ₹ 25 lakh upon KIL for violating the Code of Conduct, as per Securities and Exchange Board of India (Credit Rating Agencies) regulation, 1999 while granting credit ratings to BFL.

Further, the market regulator, SEBI, observed that the penalty levied by AO was not appropriate and issued show cause notices to rating agency, “calling upon the reasons why the penalty amount should not be enhanced”.

Discuss the regulatory prescription in the above matter and explain whether SEBI can enhance the quantum of penalty.

(6 marks)

4. (a) Aero Constructions Ltd (ACL), was a major market player in the infrastructure industry in Kochin. The Company was successful in bidding for several projects and handled multiple construction projects simultaneously. In one case, there was a disagreement with the client and the management of ACL was not ready to complete the project, pending such disagreements. This matter was referred to Court and the proceedings continued for some time. In the judicial proceedings, ACL filed an affidavit to Court, stating that nearly 75% of the work, awarded to them had been completed. The Court found the statement made in the affidavit to be false, after independent inspection by an advocate. The Court imposed a penalty on ACL for filing a false affidavit. In background of decided case law(s), examine whether the penalty imposed by the Court was justified.

(6 marks)

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- (b) Dronte India Private Ltd, is a subsidiary company of its Dronte Global Ventures Inc, which holds 95.99% shares of the Company. The company had received requests from the non-promoter shareholders to provide them with an opportunity to dispose of their shareholding in the Company. The clause 45 and 47 of the Company's Articles of Association stated that the Company, from time to time, by special resolution, reduce its capital and/or its securities premium in any manner permitted by law. Therefore, the Board of Directors decided to reduce the equity share capital of the Company by way of reduction of share capital, not by way of buy-back of shares, which was more beneficial to the Company.

Thereafter, member meeting was held for passing of special resolution in accordance with section 66(1) of the Companies Act, 2013. The application of reduction of share capital was filed with the Tribunal, was dismissed with the liberty to file appropriate application as per extant provisions of the Companies Act. Aggrieved by the said impugned order, Company filed an appeal.

Discuss and answer the following questions :

- (i) Briefly indicate, the grounds of dismissal of the petition by NCLT.
- (ii) In the background by judicial pronouncement, evaluate whether, appeal would be allowed.

(6 marks)

5. (a) Anirban issues an open 'bearer' cheque for ₹ 11,50,000 in favour of Bhemin who strikes out the word 'bearer' and puts crossing across the cheque. The cheque is thereafter negotiated to Cherian and Dhruven. When it is finally presented by Dhruven's

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banker, it is returned with remarks 'payment countermanded' by the drawer. In response to this legal notice from Dhruven, Anirban pleads that the cheque was altered after it had been issued and therefore, he is not bound to pay the cheque.

Referring to the provisions of the Negotiable Instruments Act, 1881 and settled case law :

- (i) Examine the validity of Anirban's argument.
- (ii) Dhruven presented the cheque twice and after being dishonoured, filed the complaint based on the second statutory notice. Is the appeal allowed ?

(6 marks)

- (b) Tarak, is an engineer by qualification and is part of many start-ups. During the initial start-up days, he had been part of few companies, which were floated by his friends and close relatives. Currently he is a Director on the Board of four companies including Jay Grains Ltd (JGL) and Vijaya Tech Ltd (VTL). JGL did not file its financial statements for the year ended on 31st March, 2021, 2022 and 2023 respectively with the Registrar of Companies (ROC) as mandated by the Companies Act, 2013. JGL's name was struck-off from the ROC on 28th January, 2024 due to the non-filing of financial statements and annual returns. Tarak's DIN and DSC were also cancelled subsequently. Due to this, Tarak was unable to carry on the business and file returns etc., in other Companies wherein he was a director.

In view of above facts, answer the following :

- (i) Whether Tarak is disqualified under the provisions of Companies Act, 2013 ?
- (ii) Can Tarak file returns of the VTL ?

(6 marks)

6. (a) Triaton Ltd is a software company specialising in software development for its clients. In the last decade, it has earned good name and fame. The main strength of the Company is the IT professional talent they hire and retain to serve the clients. The Company wanted to expand its base globally and was planning to start offices in other countries. The management of the Company hired Advisi Consultants LLP, a globally renowned firm to advise them on the matter of their business restructuring and enhancing their visibility. The consultants had preliminary discussions with the management and they suggested that the Company should evaluate about the 'environmental, social and governance' (ESG) metrics which would help in being a better corporate citizen and also enhance its brand value. They indicated that ESG considerations can create significant value for companies and their stakeholders. By prioritizing sustainability, social responsibility, and ethical business practices, these companies are building strong reputations, attracting top talent and positioning themselves for long-term success in a rapidly changing business environment. The management of the Company was unsure, as it envisages that there are many challenges for implementation of ESG initiatives. In this background, prepare a brief note explaining the challenges in implementing ESG initiatives.

(6 marks)

- (b) A significant example of strategic choices in Indian corporate scenario in recent times is the growth of Moon Cosmetics Ltd. Moon Cosmetics finalized a deal to enter into a strategic alliance with the Bright Group, as it attempts to establish a position in the Indian market. Moon Cosmetics Bright Private Ltd is the 50-50 joint venture between Moon Cosmetics Ltd and the Bright Cosmetic Company. Moon Cosmetics

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has opened its 60th Store in India recently. It had its first store at Phoenix Market City, Mumbai. The Company will continue to open more and more stores and grow thoughtfully in the market with a commitment to offer a unique products experience, unrivalled service, and extensive offerings with a wide range of cosmetics across the country. With 50 stores now operational across 5 cities, Moon Cosmetics Ltd continues to grow and nurture its brand in India in line with its promise to build a strong connection with Indian users. Perhaps, a little departure from the traditional practice, the stores will be rebranded as “Bright Moon Cosmetics.” With the growing population and changing demographics the consumption of cosmetics in India is on a growing trend. ‘We are going to move as fast as possible in opening as many stores as we can so long as we are successful and so long as we are embraced by the Indian consumers’ said Peter, President of Moon Cosmetics, South Asia. The need to address and respect potential cultural issues seems to have been a key factor in deciding to use the joint ventures route rather than set up a separate Moon Cosmetics subsidiary in India. ‘We never considered 51% when we looked at the opportunity to enter India, understanding the complexities of the market and the uniqueness that is India, we wanted to find a local business partner.’ Oliver Grant, the CEO of Bright group said. In this background, explain the key components of a well-developed strategic plan.

(6 marks)

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